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CORPORATE BEHAVIOUR IN RESTRAINT OF TRADE IN GOODS AND SERVICES IN PAKISTAN

Report prepared by

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1. FRAMEWORK FOR CORPORATE ENTERPRISES

1. In Pakistan, business activity is largely pursued in one or more of the following modes: under sole proprietorship, for which there is no special regulatory legislation; or in partnerships formed under the Partnership Act, 1932; or as cooperative societies registered under Corporative Societies Act, 1912; or as companies incorporated under the Companies Ordinance, 1984, with or without limited liability; or as corporations set up under special legislation; or as transnationals through offices or places of business in Pakistan; or as modarbas.

2. An association or partnership of over 20 persons may conduct business if it is incorporated as a company or is formed under some other law of Pakistan. In practice, there is no bar to adopting any lawful means of carrying on business in Pakistan, but companies incorporated under the Companies Ordinance, 1984, represent the most important sector of organized commercial and industrial enterprises. For the purpose of regulation these companies are broadly categorized as private companies and public companies. The private companies do have certain privileges, including somewhat relaxed disclosure requirements, but the formation of public companies is encouraged through various fiscal and regulatory measures that also offer tax incentives and greater freedom to expand as an enterprise.

3. Some other aspects of the companies, both foreign and local, are also regulated by the following special legislations :

- Capital Issues (Continuance and Control) Act, 1947, which regulates issue of capital by companies and requires prior authorization of the Ministry of Finance of the Federal Government for issue of capital, except in specified cases;

- Companies (Managing Agency & Election of Directors) Order, 1972, which prohibits managing agency system subject to some exceptions and provides for a cumulative voting system for election of directors;

- Securities and Exchange Ordinance, 1969, which regulates stock exchanges, securities quoted thereon, issuers, investment companies and related matters; and

- Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970, under which relating to undue concentration of economic power, unreasonable monopoly power and unreasonably restrictive trade practices are regulated by the Monopoly Control Authority (MCA).

4. Certain types of business organizations, such as banking, insurance, tourism, oil, gas and mineral exploration are licensed and regulated by special legislation.

5. Transnational corporations incorporated outside Pakistan can do business in the Country either by incorporating local subsidiaries or by establishing their offices in Pakistan after securing clearance from the Investment Promotion Bureau. In the latter case, they are required to file copies of their incorporation documents, list of directors, information about their principal office in the country of origin/Pakistan, etc., with the Company Registration Offices. The policy has been liberalized to the extent that projects with a capital cost of one billion Pakistani rupees do need not to be sanctioned if it is proposed to raise the entire amount from private sources (both foreign and local), except projects that fall in the specified list or where foreign equity is 50 per cent or more. The items on the specified list have been reduced from 12 to seven.

6. Various sectors of the domestic industry which relate to iron and steel, basic metals, heavy engineering, heavy electrical manufacturing, motor vehicles, tractors, heavy and basic chemicals, petrochemicals, agro processing industrial units, rice mills and cotton ginning, domestic oil marketing, shipping, insurance and banks were nationalized in the early and mid 1970s. In late 1970s the industrial strategy was reformulated and the role of public and private sectors was redefined. The role of the public sector was confined mainly to the completion of the ongoing projects or to initiating such projects in which private investment was not forthcoming. The Government has announced in very unambiguous terms that there will be no further nationalization. Depending upon the merits of each case, the Government has permitted private investment in an industry reserved for the public sector, but there has been no nationalization since the 1970s.

7. The Foreign Private Investment (Promotion and Protection) Act of 1976 is aimed at promoting investments in various sectors by offering tax related incentives. It defines foreign investment and specifies the areas in which it is encouraged. The law contains guarantees for foreign investors that provide for due legal process and adequate compensation in case of nationalization. The Act guarantees the repatriation of original and reinvested capital or of income from capital appreciation. It provides that no discrimination shall be allowed between national or foreign investments.

II. TRENDS IN PRIVATE INVESTMENT

8. Private investment in Pakistan has had a very chequered history. Textiles is the leading industry of the private sector but there is no good competition in this industry and the investments at all levels of production have been adequate. However, the overall trend in private investment has been showing a downward slide as the following table shows.

Table 1

SHARE OF PRIVATE AND PUBLIC INVESTMENT IN PAKISTAN

Years	Share in total investment		Percentage of the total Share in GDP	
	Private	Public	Private	Public
1960-61	57.2	42.1	7.6	5.5
1965-66	54.8	45.2	9.7	8.0
1970-71	50.1	49.9	7.0	6.9
1974-75	32.1	67.9	4.6	9.8
1979-80	39.3	60.7	6.3	11.3
1980-81	39.3	60.7	6.1	9.4
1981-82	36.4	63.6	5.6	9.7
1982-83	38.4	61.6	6.0	9.6
1983-84	40.4	59.6	6.1	9.0
1984-85	41.4	58.6	6.2	8.7
1985-86	41.2	58.8	6.1	8.7
1986-87	40.7	59.3	6.3	9.2
1987-88	42.1	57.9	6.2	8.6

9. Many manufacturing and services sectors are monopolized, in certain key areas, by TNCs, and this has acted as a break on economic development. Some more important areas of such restraints on trade are dealt with and analysed.

III. LICENCE AND TECHNOLOGY AGREEMENTS

10. The local enterpreneur, when going into a licence or technology agreement, is at the receiving end and his bargaining power is limited by his lack of technical know-how. Even in an industry that is doing well and making profits no funds are allocated for research and development. Surplus profits are siphoned off to loss-making sister companies. Over a period of five years nearly 300 million rupees were recovered under the Monopolies Law and returned to loan-advancing companies in no less than 18 separate group of companies. The loan-advancing companies are large public companies and should be diverting their surplus profits towards modernization and research.

11. The licence agreements invariably contain conditions like maintenance of minimum sales, confidentiality of manufacturing, spending on advertising an amount not less than 10 per cent of the net sales and pursuing an aggressive marketing strategy. Lately a new clause in such agreements is causing concern. A sample clause is reproduced below:

> "The local enterpreneur (his name specifically mentioned) shall at all times, directly (i) control the Manufacturer (the licensee), (ii) be capable of electing or causing the election of a majority of the directors of the Manufacturer, and (iii) own a majority of ordinary

shares of the Manufacturer. Any determination with respect to "control" shall be by the Licensor at his sole discretion. The Manufacturer shall notify the Licensor of any possible change in its control or any negotiations with respect to any change in its control. No direct or indirect transfer of any ownership interest or control of the Manufacturer shall be permitted without the prior written consent of the Licensor. The Manufacturer shall, within fifteen (15) days after filing, deliver to the Licensor certified copies of all corporate returns made by the Manufacturer under the Companies Ordinance, 1984, and any rules thereunder."

12. These restrictions are cutting at the very foundations of the anti-competition laws and an attempt is being made to inform the TNCs that if the size of the company grows to the point where it might start harming the law and competition, such clauses would be considered as ultra vires by the law.

IV. THE ANTI-COMPETITION LAW

13. Consequent upon the enforcement of the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance V of 1970, the Monopoly Control Authority (MCA) was constituted on 17 August 1971. The functions of the MCA are to register undertakings, individuals and agreements; to conduct enquiries into the general economic conditions of the country with particular reference to the concentration of economic power and the existence of the growth of monopoly power and restrictive trade practices; to conduct all such enquiries which may be necessary for the purpose of this Ordinance; to give advice to persons or undertakings upon request; to make recommendations to the Government or to the appropriate authority for suitable governmental actions to prevent or eliminate undue concentration of economic power, unreasonable monopoly power or unreasonably restrictive trade practices.

14. The major areas that have been outlined in three separate categories for the MCA to look into, examine and take action against are (1) undue concentration of economic power, (2) unreasonable monopoly power, and (3) unreasonably restrictive trade practices. The instances that constitute undue concentration of economic power have been outlined. They are, inter alia, the case of an undertaking the total value of whose assets is more than 150 million rupees and which is not owned by a public company, or is owned by a public company, or is owned by a public company but in which an individual holds and controls shares carrying not less than 50 per cent of the voting power. Similarly, inter-corporate dealings that have the effect of unfairly benefiting the owners of share-holders of one such undertaking to the detriment of the owners or share-holders of another associated undertaking have been brought within the purview of the law. The concept of "associated undertaking" has been defined. It covers situations like 30 per cent common share holdings, partnerships, official positions, or a combination of any of these two; also the situation of one undertaking which is a subsidiary of another or if the undertakings are under common management or common control.

15. Monopoly power is defined as the ability of one or more sellers in a market to set non-competitive prices or restrict output without losing a substantial share of the market or to exclude others from any part of that market. The criterion of unreasonableness has to be looked into and determined before a case concerning monopoly power is effectively and finally

dealt with. The establishment of a relationship between two or more undertakings which makes them associated undertakings when they are competitors in the same market so that they together purchase, supply, distribute or provide not less than one third of the total goods or services in that market, is also prohibited. Similarly any merger of undertakings or taking over the stocks or assets of any other person or undertaking by another person or undertaking where the effect is to create monopoly power or is an attempt to lessen competition in the market, is also subject to prohibition. The law also provides that the terms and conditions of the loans granted by the banks or insurance companies shall not vary so as to be more favourable to an undertaking associated with such bank or insurance company than the terms and conditions on which loan is granted to an undertaking which is not so associated.

16. Unreasonably restrictive trade practice means a trade practice which has or may have the effect of unreasonably preventing, restraining or otherwise lessening competition in any manner. The law covers situations like price fixing, re-sale price maintenance, market sharing, collective refusals to deal and tying arrangements. An agreement between actual and potential competitors that has the effect of fixing the purchase or selling prices, of imposing restrictive trading conditions in the selling of goods or the provisions of services, of dividing or sharing of markets, of limiting the quantity or the means of production, distribution or sale, of limiting technical development or investment relating to production, distribution or sale, or of excluding by means of boycott any other person or undertaking from any of the trade, is considered illegal. An agreement for resale price maintenance is also prohibited under the law.

17. In the matter of concentration of economic power, of monopoly power or of restrictive trade practices, the law gives power to add to the existing prohibitions by prescribing circumstances in which undue concentration of economic power or unreasonable monopoly power shall be deemed to exist and the practices which shall be deemed to be unreasonably restrictive trade practices. The purpose is to identify new situations that are operating against the public interest. For a vigorous enforcement of anti-competition law, the measure provides a broad and flexible basis for taking effective and wide ranging actions to check unhealthy economic situations. However, few people have availed themselves of this law. An important case of this nature is discussed with reference to attempts to deal with the "tobacco monopoly" (cf. section V).

18. With the enactment of the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance V of 1970, a new special subject was added to the statute book of Pakistan. Provisions of the said Ordinance prohibit undue concentration of economic power, unreasonable monopoly power and unreasonably restrictive trade practices. The particularity of this new legislation lies in the fact that consideration of socio-economic issues would become the basis of some of the decisions of the courts of law. The legislature has no doubt prescribed the limits within which the law is to operate, but having laid down the guidelines, it has entrusted to the courts the very onerous and significant task of remedying the economic ills of society. This is a task which is not so easily accomplished.

19. The problem of monopoly and competition is by no means a recent concern of governments. References are available of monopolistic practices in law codes written more than 4,000 years ago in Ba. It would be of interest to

mention here that there are monuments in the area of the sub-continent of Indo-Pakistan that date back more than 2,000 years, recording regulations to prohibit merchants and producers from making collective agreements to influence the natural market prices of goods by withholding them from trade; boycotts are mentioned among other punishable offenses as well as any interference with the buying and selling activities of others. But it is in modern times, when the frontiers of world trade and investment are fast shifting, that anti-competition regulation has attained a complexity that is not easily resolved, keeping the goals of national economic development in view.

V. TOBACCO MONOPOLY

20. In the field of unreasonable monopoly power, the effect of the legislation has largely been of a deterrent nature. In the early 1970's, however, an action was brought against two cigarette manufacturers for having created or maintained a relationship between two or more undertakings which made them associated undertakings where they had been competitors in the same market. A leading cigarette manufacturer, Pakistan Tobacco Company Limited, commanded 40.8 per cent of the total market for cigarettes in the country and its associated undertaking, also a cigarette manufacturer, Khyber Tobacco Company Limited, has a 16.2 per cent share. Thus together they controlled a total of 57 per cent of the total market. The facts relating to the association were that Pakistan Tobacco Company Limited controlled more than 33 per cent of the shareholdings in Khyber Tobacco Company which was managed by a board of seven directors of whom three were executives of Pakistan Tobacco. The MCA issued a notice to the two undertakings that there was a relationship between them which, in the absence of further evidence, would constitute a situation of unreasonable monopoly power. The companies could have been required to proceed for divestiture of shares or of any position held by a person as an officer or director in an undertaking. In support of the said relationship it was argued that the smaller undertaking had suffered heavy financial losses and that its efforts to secure technical aid from other quarters had not succeeded. The said association between the two undertakings had resulted in a number of advantages of a managerial and technical nature accruing to the smaller undertaking and they pleaded for exemption available under the law. Among the advantages listed, mention was made of the availability of the benefits of international research and development in technology as well as provision of cost-free advice on consumer attitudes, consumption patterns and studies pertaining to advertising media. It was also shown that over a period of ten years there had been a manifold increase in the production of smaller undertaking. It was therefore decided that no case could be sustained against the undertakings for contravention of the law. However, in later years it was to be seen that a monopoly situation in certain brands of tobacco products became quite serious. A very great amount of effort was expended in attempting to remedy market distortions.

21. As has been stated above, the Monopolies and Restrictive Trade Practices Ordinance empowers the MCA to prescribe the trade practices which shall be deemed to be unreasonably restrictive trade practices. An enquiry into the distribution system for tobacco (65,9 equity is held by a TNC in the leading manufacturer of tobacco products whose brands were consistently in short-supply for the purpose of creating shortages) and some other products in the country, the MCA issued General Order by which the practice of appointing sole distributors by large-scale manufacturers of such products was declared to be an unreasonably restrictive trade practice for the reason that it was tantamount to limiting the means of distribution in larger cities. It was a

case of an inter brand lack of competition. The existing system consisted of a distribution pipeline that began with the manufacturers and passed through sole distributors in larger cities to reach wholesalers and retailers. Manufacturers also supplied directly to some special customers, but this did not significantly cut across the normal distribution chain. Because of there being a monopoly situation at the level of the manufacturer of these products, the distributor was entrusted with an extreme and absolute authority which was exploited for the purpose of creating artificial shortages and enhancing prices. Against this background and after considering the distribution pattern at length, it was clear that shortages of these products were confined to larger cities. The said General Order attempted to hit at the exclusive dealing arrangements between manufacturers and sole distribution and made provision for a greater number of distribution outlets in cities with large populations. The affected parties challenged the validity of the General Order in the various High Courts. The objections to issuance of the General Order were primarily technical in law though it was also alleged that the Order might not achieve the desired result of easing the flow of products into the market. The Lahore High Court in its detailed judgement upheld the validity of the General Order. While speaking of economics of the law and of unreasonably restrictive trade practices, the Court observed that the Monopoly Control Authority had been created precisely for the purpose of going into such questions of economics, bringing the expertise of its members to bear upon them and then taking such steps as may be in the best interest of the public at large. In respect of the exercise of powers under the law, it was contended that unfettered powers had been bestowed on the MCA for prescribing new circumstances in respect of unreasonably restrictive trade practices. The Court, however, expresssed its opinion in the following words: In view of the definition of "restrictive trade practices" given in or deduced from the Ordinance itself, it is clear that the practices to be prescribed by the MCA under the law as deeming to be unreasonably restrictive trade practices have got to be in the first place trade practices and not any practices; and, in the second, restrictive trade practices and not any trade practices. Thus the only discretion left with the Authority is to decide whether any restrictive trade practice as defined is reasonably restrictive or unreasonably restrictive. It was not possible for the legislature to carry out a survey of all the restrictive trade practices prevalent in the country or to imagine all the possible restrictive trade practices likely to be resorted to in future and to classify them into the "reasonable" and "unreasonable" categories. The legislature was, therefore, perfectly justified in leaving the question to be decided by a body of experts in the case of each industry and each situation. In an inter-court appeal before a Division Bench there had been a split decision on a procedural issue and the matter had since been referred to a third judge for a final decision on the case. In the meanwhile a petition filed before the High Court, Sind, was also decided in favour of the MCA and the case has since been taken to the Supreme Court of Pakistan where it is pending adjudication.

VI. EQUITY BASE AND TRANSNATIONAL CORPORATIONS (TNCs)

22. Through negotiations and enquiries many local companies have been persuaded to go public and list themselves on the stock exchange. No doubt in the listed companies large amounts of shares are held by specified groups, but over the years it has been seen that through the natural market and economic forces the equity base does get to enlarge in the sense that it includes more shareholders. But it is the TNCs which show great resilience to any attempt to reshape the company's structure or to modify its equity shareholding in any meaningful manner.

23. The sanctioning procedures for foreign investment still lack the kind of sophistication that is required for such negotiations and for assessment of the benefits of a particular investment proposal. In dealing with the TNCs the problems faced are, for example, evident in the following cases.

24. Smith Kline & French of Pakistan Limited has been registered as a private limited company as its total value of assets was more than the statutory limit of 50 million rupees. Composition of its capital was as follows :

	Million Rupees	Percentage
3.375 million ordinary shares of Rs. 10/- each fully paid up held by Smith Kline & French International Company USA.	33.75	75
1.125 million ordinary shares of Rs. 10/- each fully paid up held by Pakistani shareholders	11.25	25
Total :	45.00	100

25. The company was asked to convert itself in to a public company. In reply the company argued that its conversion might not serve any useful purpose, but after prolonged negotiations and the hearings the company showed its willingness to convert itself into a public company and finally declared that it would convert itself into a public limited company listed on the stock exchange. After obtaining necessary approval from Controller of Capital Issues, the company offered 50 per cent shares (i.e., 562,500 ordinary shares) held by the Pakistani shareholders to the general public, NIT (investment institution) and employees of the company. The shares were fully subscribed and the company was listed on the stock exchange. As is evident, the TNC had not diluted its percentage of shareholding and its equity base remained unchanged.

26 The Boots Company (Pakistan) Limited had been registered with the MCA as a private limited company and its value of assets was 65.69 million rupees. Out of total paid-up capital of 948,500 shares of Rs.10/- each 56.46 per cent shares were held by Boots Company PLC, a public company incorporated in the United Kingdom. The remaining 43.54 per cent shares were held by two Pakistani families. An action to seek its conversion into a public company was being contemplated when the company itself started negotiations with the Controller of Capital Issues for conversion into a public limited company listed on the stock exchange. It was so converted and it got itself listed on the stock exchange. Even after conversion, its 2,560,950 shares of Rs. 10/- each were held by:

Boots Company, PLC, UK	(56.46%),
Pakistani Sponsors	(21.77%)
General public, NIT and company's employees	(21.77%).

There was no change in the percentage of the shareholding of the TNC.

VII. BANKING AND INSURANCE

27. In the mid 1970s banking and part operation of the insurance business was nationalized. Despite a complete change in the governmental policies with respect to private and foreign investment, the record of the nationalized banks in disbursing qualitative credit has not been very good. There has been a mass exodus to the Middle East of experienced personnel in the banking services and the expansion of banking at home has not been able to cope with the availability and inflow of a stream of sufficiently trained staff. It is alleged by the private sector that the banks find it far easier to deal with, and lend financial credit to, public sector industries rather than go into negotiations with the private entrepreneurs. The nationalized portion of the insurance business engages only in investing in real estate. They have invested in big high rise office buildings in large cities and in this task all the infrastructural facilities are readily available to them.

28. The other lenders to the private sector are the state owned investment institutions. But here again these institutions retain a good portion of the equity and the private sector companies continue to face the difficulty of mobilization of financial resources because a substantial amount of profits earned on investments go to the financial institutions. An investigation revealed that an executive of a financial institution was represented as a member of the board of directors in more than 50 companies. The monopolization of financial resources results in inefficiency and a lessening of confidence to deal in an open and free market economy. The heavy machine base in the country is now exporting completely manufactured sugar plants and the construction industry has carried out major projects in other countries. But there is no support from the indigenous banking and insurance services. The construction firms cannot even compete in international tenders because performance bonds required for such bidding would not be issued to them.

VIII. MARKETING ASSOCIATIONS

29. A consistent problem has been faced in dealing with one particular marketing association, the importers of books into the country. In any developing country it is essential that books and ancillary material are sufficiently available to keep up good academic standards to universities, colleges and among the educated people. The objective is severely frustrated by the prohibitive prices of imported books and magazines. The government provides sufficient foreign exchange to the importers of books but the importers resort to numerous malpractices. Invariably the books are imported from a foreign market that is dearer, but an almost criminal practice is to sell books at the price printed on the jacket when the importer himself has picked up the lot at a substantially reduced price in the foreign market. Complaint has been voiced by the developing countries that resale price maintenance should not be permitted by the developed countries in their own markets for printed material. However the problem is further aggravated in the developing countries when the importers charge an enhanced exchange rate on imported books, a rate which is 30 to 40 per cent more than the official exchange rate on which such books are imported.

IX. THE TEA TRADE AND TRANSFER PRICING IN THE INTERNATIONAL MARKET

30. In the 1970s, investigation revealed that a well-known TNC, engaged in the electronic business, was manufacturing micro-chips in the country and exporting them to the parent companies at prices that were greatly below the prices in the international market. In the course of the enquiry the TNC decided to discontinue the business and sold the facilities in the local market. But lately it was in tea trade that the practice of transfer pricing between sister companies of TNCs was discovered.

31. A reference from the Ministry of Commerce showed that TNCs dealing in tea trade had enchanced over the years their share of imports from Kenya. For instance, in 1982-83 the share of tea imports from Kenya into the country was about 20 per cent of the total imports of tea, but this share increased to 56 per cent in 1985-86 and the prices of tea imported form Kenya were substantially higher than the prices in the international market.

32. An investigation into the trade revealed that the tea trade in the country was controlled by the TNCs, Lipton (Pakistan) Limited and Brooke Bond Pakistan limited. Their share of sales in the local market was more than 50 percent of the total imports of tea. All tea sold in Pakistan is imported. The parent companies of Lipton and Brooke Bond had merged through Unilever, Plc, U.K., which held 75 per cent and 58 per cent of the shares in Lipton (Pakistan) Limited and Brooke Bond Group Limited, U.K., respectively. Brooke Bond Group Pakistan Limited, U.K., held, for its part, 50 per cent of the share capital of Brooke Bond Pakistan Limited.

33. Through the information collected it was evident that the average prices of tea imported from sister companies in Kenya were higher than the prices paid by them to other sellers in the international market. In the case of Lipton alone, about one third of its tea imports for a particular year were from Kenya and out of this more than 90 per cent of the purchases were from the sister companies. Negotiations with the representatives of Unilever are in progress. In principle, it has offered to withdraw one of its brand names from the market accompanied by some structural changes of their investment in the country. This would reduce their share of tea sales in the market.

X. NEWSPAPER MEDIA

34. Notwithstanding the fact that the availability of advertisement, mostly emanating from the governmental agencies, acts as a constraint, there is good competition in the newspaper industry generally. Although two or three leading newspapers have a large part of the total circulation of newspapers in the country, this fact also helps them to produce a better standard of journalism. A daily newspaper published in Karachi complained about a resolution passed by the All Pakistan Newspapers Society which contained a clause to the effect that they would boycott any newspaper which decides to sell at a cost less than that fixed by the APNS. An agreement between actual or potential competitors for the purpose of having the effect of fixing the purchase or selling prices is prohibited and, upon initiation of an enquiry, the copy of the said resolution was asked for from APNS to check for the contravention of this provision of the law. The APNS readily informed that the final resolution did not contain the restrictive clause.

XI. AUDIT AND MANAGEMENT CONSULTANCY SERVICES

35. Although there is now a larger number of chartered accountants working in the country, a good number of audit jobs are still monopolized by about half a dozen firms. Two to three firms still bear their foreign names, although their partnerships make up has been made totally indigenous. The audit jobs for TNCs and large industrial groups are nearly monopolized by these firms. Some of the leading firms employ as many as 600 to 700 audit clerks, but the percentage of students passing the final examination of accountancy is very low. Lately, institutional reforms and the enactment of a new law to govern the profession has yielded some results and audit clerks have begun to become full chartered accountants. But in the matter of providing greater competition in the availability of audit and fiscal advice, and of management consultancy services, much effort is required to bring greater competition, thus making available to a new enterpreneur the services of the professional needed to launch a new venture or the advice to expand to a larger scale the business of a small but efficient investor. At present, the equity market in the country is not very large. The number of all the registered companies is just over 20,000 of which not more than 411 are listed on the stock exchange. The lack of expansion in the number of private corporate enterprises is partly the result of non availability of professional services, though the number of medium scale investors who wish to launch corporate business is fairly large.

XII. RESPONSE OF INVESTORS IN THE LOCAL COMPANIES

36. Owing to the inflexibility of the investment market, the response of investors in companies that have been found to be in good shape and making good profits is slackened by the unwillingness of the company itself to go public. The following case illustrates how efforts for the formation of a good equity market are being frustrated.

37. United Woollen Mills Limited was registered under the Monopolies Law as a private limited company. After issuance of a notice, the company converted into a public company. It was directed to offer 50 per cent of its issued capital to the general public. The order was not complied with and another notice was issued to the undertaking to state its reasons for not doing so. In reply, the undertaking submitted that they had already applied to the authorities concerned for obtaining consent to issue bonus shares and approval had also been sought for offer of sale of shares to the general public. The company published its offer for sale of shares. 50 per cent shares out of a total of 1,448,162 shares of Rs. 10/- each were offered to the general public at a premium of Rs. 3.21 per share. The public response to the offer of the shares was very poor as only 5.7 per cent of the total shares were subscribed which were reduced to 4 per cent after refund. The stock exchange naturally refused to list the company but allowed the company to re-offer the shares. The company again published the offer for sale of shares on the same terms. This time the general public subscribed 24.2 per cent of the total shares, thus making a total of 28.2 per cent of the capital and the company was listed on the stock exchange. Similarly, each case of this nature presents particular problems of its own.

XIII. INTRA ENTERPRISE TRANSACTIONS

38. The economic market in the country, for reasons discussed earlier, is failing to expand to meet national development objectives because of non-participation of various groups and institutions towards development of an integrated market economy. The textile and sugar industries are making good profits but over the years large funds have been misplaced and a very useful source of investment in appropriate industries has been lost. The following case is a particular example of such an intra-enterprise transaction.

39. Olympia Blended Fibre Mills Limited had given loans and advances, amounting to Rs.35.825 million to its associated undertakings and did not charge any interest thereon. The company was asked to explain. It made the plea that the policy of the group of companies was to provide financial assistance to associated undertakings when required. The plea was not accepted and the company gave an assurance that it would recover the said loans and advances within a year.

40. A sum of 400 million rupees was involved in transactions by more than 18 groups of companies and, of this sum, 300 million rupees were recovered and returned to the respective companies over a period of five years.

XIV. ECONOMIC DEVELOPMENT AND PUBLIC INTEREST

41. A major difficulty in identifying and measuring the significance of a particular trade practice or conduct is that there is generally very little public information available about the financial characteristics of an undertaking. The financial statements of undertakings are presented on a consolidated basis and this makes it virtually impossible to interpret the impact of particular business or trade practices in the market. The central problem of all such anti-competition policies is the full discovery of the facts. Usually it takes a long period before industrial behaviour and business trends can be pin-pointed with certainty in a particular trade or in the behaviour of an undertaking as a unit. Any institution entrusted with the work of enforcing anti-competition laws requires long-term planning that would envisage training in the field of a specialized staff for exhaustive research. One must also ensure that the laws are appropriately amended from time to time to cater for new situations and circumstances. Its development would depend, in no slight manner, on the efforts that seek to implement an effective enforcement policy.

42. We are, time and again, confronted with the question of principles that would underlie any determination of public interest or public justice. It is quite clear that the matter of public interest or a policy on competition is not simply a question of applying economics. The economic theory in relation to monopolies and restrictive trade practices is most controversial and elastic. But it would not be wrong to say that the formulation of public policies bearing on competition is strongly influenced by public goals and current government activities. The opportunities for using economic analysis and enquiries are determined by such regulatory policies. Thus the importance of formulation of a policy that is geared to principles of keeping the market and the economy free from monopolistic and restrictive methods in business behaviour cannot be emphasized too strongly. The emphasis on keeping alive fair competition in the market would go a long way to protecting consumers and the public from raised prices which result from monopolization and restrictive trade practices. There may be substantial differences among economists as to

the methodology and extent the Government may go in seeking to protect consumers' interest or to control prices. But there seems very little difference on the view that measures must be adopted firmly so as to protect the free market forces against the evils of monopoly and price fixing.

43. Consumer behaviour and market response has a direct bearing on the function of an economic system. Whenever, for multiple reasons, the response slackens, the Government may be required to amend the instruction or supplement the response so that it accords better with the public interest. The difficult matter of determination of public interest in the matter of price structure or monopoly situation would depend on the resolution and treatment of conflicts between policies designed to ensure more competition and those designed to achieve greater efficiency through the achievement of economies of scale. In slightly more specific terms, the desirable economic results of such a policy would be to see: (1) efficiency in the use of resources; (2) growth of total output and of output per head and development of new cheaper production methods and new improved products; (3) stability in output and employment; and (4) an equitable distribution of income.

44. The actual enforcement of the competition policies is not likely to encompass all the above mentioned objectives of an economic policy for the reason that in economic activities the rule of public good is made to confront the economic norms of effectiveness. The conception of the public interest, when related to the idea of common good, in fact becomes a pointer towards a need for realization of certain objectives in an economic system. It would be quite evident that the idea of the public interest should be connected with the idea of a dynamic and living community. While administering policies that are geared towards achieving goals which are synonymous with the ideas of economic development, the evolution of such principles would tend to restrict or enlarge, as the case may be, the scope of all such opportunities.

45. These principles need be projected and applied at the global level to problems arising out of imbalances in the world trade. The world is fast shrinking in terms of economic activities and changes in any corner of the globe are immediately felt by the world economy. The term "corporate culture" is fast becoming popular in the larger TNCs. It is equally imperative that TNCs must also absorb the concept of integration and inter-dependence of the various economies and make their contribution towards liberalized and more balanced trends in world trade. Even in the developed countries the large companies are not putting up adequate safeguards against environmental threats and this is one area where the developing countries need proper planning which is lacking in every practical sense of the word.

XV. CONCLUSIONS

46. The provision of services in a country contributes substantially to its economic development. Whether these services are state-controlled or otherwise, it is essential that steps be taken to remove restraints so that a free, competitive market economy can function. Over-regulation of the corporate environment can be counter-productive, and a more effective approach may be to establish congenial links between the various sectors of economy. Pakistan is basically an agriculture country, but the share of agriculture in the GDP has come down from 46 per cent in 1960 to 22 per cent in 1990. In the past 30 years, the manufacturing sector has registered a slow growth from a 12

per cent share of GDP to an 18 per cent share. The services sector has expanded from a 38 per cent share in 1960 to about 49 per cent in 1990. The provision of services and availablity of infrastructural facilities are important for the expansion of the corporate sector. For any meaningful development to occur, it is important that these services be made available not only to the far and few investors in large scale industries in the public or private sector but also to the medium scale enterpreneur for whom the barriers to market entry must not only be lowered but fully removed.